

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 720 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHIVAJI VIHAJI THAKOR

Versus

LALITADEVI PARK COOPERATIVE HOUSING SOCIETY LIMITED

Appearance:

MR JAYANT PATEL for Petitioners

MR RAVINDRA SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/08/1999

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. Ravindra Shah, learned advocate for the respondent.

2. Heard. The petitioners with allegations of facts with regard to their possession of the land in question filed above petition under Article 226 of the Constitution of India challenging the order dated

29/1/1998 passed by the learned Registrar's Nominee below the application for interim injunction moved by the respondent society. The petitioners also asserted that the Board of Nominee did not have jurisdiction to entertain the suit on the ground that the petitioners were the tenants in respect of the land in question. On 5/2/1998 the following order was passed by this Court :-

"S.O. to 19/2/1998. During pendency of the petition, the petitioners shall not be dispossessed of the land in question if, as per the report of the Commissioner, the petitioners were in fact in possession of the land in question. Without prejudice to the contentions raised in this petition, it would be open to the petitioners to file their reply before the Board of Nominees with regard to jurisdiction. Direct service permitted."

3. Mr. Ravindra Shah, learned advocate for the respondent has placed on the record of this petition copy of the order passed by the Board of Nominee below the respondent's application for interim injunction in Lavad Suit No. 171 of 1998 dismissing the respondent - society's interim injunction application and vacating the interim injunction against which this petition was directed. His submission therefrom is that the cause in this petition would not survive.

4. As against above, Mr. Jayant Patel, learned advocate for the petitioners submits that the question with regard to jurisdiction of the Board of Nominee is pending before the said authority in the suit. It is his further submission that the application raising the question of jurisdiction as preliminary question has also been given and the same is also pending. He has finally submitted that the revision application was preferred against the aforesaid order passed by the Board of Nominee vacating the interim injunction and the Tribunal has granted stay in the said revision application. Hence, he prays for interim relief which has been granted by this Court being extended appropriately.

5. In so far as the question of jurisdiction is concerned, it would be obviously open to the petitioners to request the learned Board of Nominee for deciding the application for hearing the said question as preliminary issue. As and when the Board of Nominee decides that application, it is obvious that the petitioners would be entitled to avail of remedy in accordance with law, if the order is against them. It will be open to the

petitioners to move the learned Board of Nominee to have that application decided at the earliest. In my opinion, the first prayer in this writ petition with regard to jurisdiction of Board of Nominee will not survive in this view of the matter.

6. In so far as the request for continuation of the aforesaid order passed by this Court is concerned, the petitioners might be left at liberty to request the learned Tribunal for modification of the order of stay passed by the Tribunal in the revision application, which has been moved by the respondent society against the order vacating the interim injunction passed by the learned Board of Nominee. It would be open to the petitioners to point out the order that was passed by this Court. This is in the background of the submission of Mr. Ravindra Shah that the order vacating interim injunction passed by the learned Board of Nominee has not been stayed, but parties are directed to maintain status-quo. If that is the order passed by the Tribunal, in my opinion, the grievance of the petitioners or for that matter the apprehension of the petitioners will not survive. In case the order of stay has been passed, it will be open to the petitioners to move the learned Tribunal for appropriate modification in the line in which submission has been made by Mr. Ravindra Shah about the status-quo being maintained by the parties. For that purpose petitioners are granted time upto 30/8/1999. Till then parties will maintain status-quo. In above view of the matter, nothing survives in this petition. Rule is discharged. No order as to cost. D.S.P.

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PVR.